In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 889

LENORE S. ROBINETTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Sixth Circuit, and
BRIEF IN SUPPORT THEREOF.

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The Petition of Lenore S. Robinette, who also was the petitioner below, respectfully shows:

I.
SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a Petition for a Writ of Certiorari to review a judgment of the Circuit Court of Appeals for the Sixth Circuit which affirmed the judgment of the United States Board of Tax Appeals, now the Tax Court of the United States, on an appeal taken by petitioner to said Board for re-determination of an income tax deficiency asserted by Respondent with respect to the income for the year 1918 of one Charles C. Cohn. It will be shown presently how petitioner came to be brought into the case.

(a) The facts, history of the case and statement of contentions of parties as to basic question involved.

Charles C. Cohn was a citizen of the United States, and resided and practiced law in Manila, in the Philippine Islands, from 1903 until about June, 1919. (R. 22, 32.)

In February, 1919, he filed with the Collector of Internal Revenue, at Manila, his income tax return of his income from all sources for the year 1918. Thereafter he paid to said Collector the taxes shown by said return to be due, also an additional assessment for that year. (R. 21, 33.)

In July, 1919, he returned to the United States and became a resident of San Francisco. (R. 22, 33.)

In October, 1919, he formally changed his name from Charles C. Cohn to Charles C. Cole. (R. 22, 33.)

In August, 1923, he wrote a letter to the Collector of Internal Revenue at Baltimore, telling said Collector that his income tax return for the year 1918 had been filed with the Collector of Internal Revenue at Manila. (R. 22, 28, 33.)

In September, 1931, he died, a resident of San Francisco. A Federal estate tax return for his estate was filed with the Collector there. That return was examined by Respondent and it was thereupon determined by Respondent that in computing the net value of the deceased taxpayer's estate subject to that tax certain debts were deductible from the gross estate, but among them was no deficiency income tax item for the year 1918 for payment of which either he or his estate was liable. (R. 22, 33, 24.)

In November, 1932, certain property of his estate worth in excess of $30,712.22, or the aggregate of the amounts originally sought to be collected by Respondent from petitioner herein, was distributed to his son, Creswell C. Cole. Petitioner was then the wife of said son. (R. 23, 4, 33.)

In September, 1935, said son died, a resident of a suburb of San Francisco. A Federal estate tax return for his estate was filed with the Collector there. That re-

turn was examined by Respondent and it was thereupon determined by Respondent that in computing the net value of said son's estate subject to that tax certain debts were deductible from the gross estate, but among them was no item representing an income tax deficiency of Charles C. Cohn for the year 1918 for the payment of which said son or his estate was liable as transferee. (R. 23, 33, 24.)

In November, 1936, the residue of said son's estate, worth in excess of $30,712.22, was distributed to petitioner. Petitioner later remarried. (R. 23, 33.)

In May, 1940, Respondent mailed to petitioner as transferee his notice of determination of the amount of the income tax deficiency for the year 1918 which is in controversy herein. Appeal from said determination was thereupon taken by petitioner to the Board of Tax Appeals. (R. 10, 3.)

In August, 1942, the Board sustained Respondent's determination of petitioner's liability and entered judgment in favor of Respondent and against petitioner as such transferee for the amount of the said deficiency in controversy for the year 1918, to-wit, $27,914.38 and interest thereon from July 1, 1939. (R. 31, 45.)

In November, 1942, pursuant to a stipulation conforming to the provisions of I. R. C. Section 1141(b)(2), petitioner filed her petition to have the Board's judgment reviewed by the Circuit Court of Appeals for the Sixth Circuit. (R. 48.)

On December 8, 1943 that Court affirmed the judgment of the Board of Tax Appeals. (R. 63, 69.)

On January 24, 1944 petitioner's Petition for Rehearing was denied by that Court. (R. 77.)

No assessment of the deficiency has ever been made against either Charles C. Cohn (later Cole) or his estate, or Creswell C. Cole or his estate. (R. 23, 33.)

Charles C. Cohn (later Cole) will hereinafter be referred to as the taxpayer.

The deficiency in controversy represents the net amoun as income tax for the year 1918 which Respondent con tends was imposed by the Revenue Act of 1918 with re spect to the taxpayer's income from all sources for tha year. (R. 30, 34.) Petitioner contends basically that in come tax was imposed with respect to the taxpayer's sai income for that year, not at the rates of the Revenue Ac of 1918, but only at those of the Revenue Act of 191 (R. 34.)

(b) Questions Presented Include:

1. Was income tax imposed at the rates prescribed b the Revenue Act of 1918 with respect to the income fo that year of the taxpayer, Charles C. Cohn, who duri that year resided in the Philippine Islands?

2. Was authority granted to the Respondent to a minister the provisions of the Revenue Act of 1918 wi respect to the income for that year of any United Stat citizen who then resided in the Philippine Islands?

3. Was the assessment and collection of the deficien in controversy barred many years ago by a statute of limi tions?

4. Was the question concerning liability for the inco tax deficiency in controversy closed when the Respond computed and determined Federal estate taxes in t estates of each of the transferors, Charles C. Cole a Creswell C. Cole, without taking the now asserted ficiency amount into account as a liability of the estate either of them?

5. Is petitioner as transferee liable for interest any of the deficiency in controversy before the taxpay liability for the deficiency has been finally established, if so may deficiency and interest thereon be assessed aga her in an aggregate amount greater than the value of assets shown to have been received by her as transferee

II.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

In holding and deciding:

(1) That income tax was imposed at the rates prescribed by the Revenue Act of 1918 with respect to the incomes for that year of United States citizens who then resided in the Philippine Isands;

(2) That Respondent had and has authority to administer the provisions of that Act with respect to such incomes;

(3) and (4) That no statute of limitations, or former tax determination made by the Respondent in any Federal estate tax proceeding, operated to bar the assessment of the deficiency against the petitioner as transferee of a transferee of property from the estate of the deceased taxpayer; and

(5) That such assessment can include interest on said deficiency from July 1, 1939, and be for a total amount, including the deficiency and interest thereon together, greater than the value of the property shown to have been received by petitioner as transferee;

Said Circuit Court of Appeals decided Federal questions in a way probably in conflict with applicable decisions of this Court. Moreover in its decision said Circuit Court of Appeals so far departed from or sanctioned departure by a lower Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Some of the said Federal questions decided by said Circuit Court of Appeals are of public importance and have not been, but should be, decided and settled by this Court.

The decision of said Circuit Court of Appeals is inconsistent with decisions of this Court and of other Federal courts in analogous cases. Such cases, being numerous, will be referred to in petitioner's brief which is annexed to

this Petition. Much confusion and litigation will ensue if the questions presented are not finally settled by this Court, especially since many persons like the taxpayer in this case believed in 1919 and thereafter that the tax rate provisions of the Revenue Act of 1918 were not applicable to the income for the year 1918 of any United States citizen who during that year resided in the Philippine Islands. It has been only since about the year 1938 that Respondent has attempted to administer the provisions of the Revenue Act of 1918 in those Islands. Many taxpayers, or persons in a situation similar to that of the taxpayer or the petitioner in this case, will be uncertain as to their liabilities, if any, arising by reason of the interpretations which have been given to the provisions of the Revenue Act of 1918 by said Circuit Court of Appeals.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review a full and complete transcript of the record and proceedings in this cause, No. 9473 on the docket of said Circuit Court, and entitled there as in this Petition, to the end that this cause may be reviewed and the rights of the parties determined by this Court according to law; and that your petitioner may have such other and further relief as to this Court may seem proper and in conformity with law.

And your petitioner will ever pray.

Dated April 10, 1944.

LENORE S. ROBINETTE, *Petitioner,*

By T. G. THOMPSON,

Her Counsel.

In the Supreme Court of the United States

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vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF COURT BELOW.

The opinion of the Circuit Court of Appeals for the Sixth Circuit has not yet been officially reported. It will be found on pages 65-69 of the Record.

JURISDICTION.

1. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938; United States Code, Title 28, Sec. 347. Tax cases in which transferees of property instead of original taxpayers are interested are reviewable in this Court on certiorari to a Circuit Court of Appeals. *Phillips v. Commissioner,* 283 U. S. 589.

2. The judgment of the Circuit Court of Appeals was entered on December 8, 1943. (R. 63.) A Petition for Rehearing, seasonably filed, was denied on January 24, 1944. (R. 71, 77.) Petitioner is allowed three months from the

latter date within which to file her Petition for Writ of Certiorari. Act of February 13, 1925, c. 229, Sec. 8 (a, b, d), 43 Stat. 940; United States Code, Title 28, Sec. 380; *Gypsy Oil Co. v. Escoe,* 275 U. S. 498.

STATEMENT OF THE CASE AND OF QUESTIONS INVOLVED.

The Petition for Writ of Certiorari contains a statement of the case and of the questions involved, as well as of all the facts material for consideration of the questions. *Supra,* p. 2. As in the Petition, Charles C. Cohn (later Cole) will hereinafter be referred to as the taxpayer.

The findings of fact and the opinion of the Board of Tax Appeals are reported in 46 B. T. A. 1138, and are copied on pages 31-40, 46-47 of the Record.

Relevant portions of some of the most important of the statutory provisions involved are printed in chronological order in the Appendix.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In holding and deciding that income tax was imposed at the rates prescribed by the Revenue Act of 1918 with respect to the incomes for that year of United States citizens who then resided in the Philippine Islands.

2. In holding and deciding that Respondent had power to administer provisions of the Revenue Act of 1918 with respect to the incomes for that year of United States citizens who then resided in the Philippine Islands.

3. In holding and deciding that the filing, with the Collector of Internal Revenue for the Philippine Islands, by a citizen of the United States who during the year 1918 resided in those Islands, of his income tax return of his income from all sources for that year, did not start the

running of the applicable statute of limitations against the assessment of an income tax deficiency for that year, and in holding that, notwithstanding every statutory limitation provision, the deficiency in controversy for that year is now assessable against the petitioner, as transferee of a transferee of property from the estate of such citizen.

4. In not holding and deciding that the question of liability for the income tax deficiency in controversy was closed, under *res adjudicata* or comparable doctrines, when the Respondent in appropriate proceedings determined Federal estate taxes due both from the estate of the first transferor, the taxpayer, Charles C. Cole, and from the estate of Creswell C. Cole, the transferee of property from the estate of said Charles C. Cole, without then asserting and proving and deducting from the gross estate of either of them, as determined in those proceedings, any amount representing an income tax deficiency of the taxpayer for the year 1918.

5. In holding and deciding that there can and should be assessed against the petitioner herein, as transferee of a transferee of property from the estate of the taxpayer, an amount, representing the asserted income tax deficiency of such taxpayer for the year 1918, and interest thereon, greater in the aggregate than the value of the assets, formerly owned by the estate of the taxpayer, which were shown by the Record to have been received by the petitioner.

ARGUMENT.

The reasons relied upon for allowance of the Writ, as such reasons are set forth in the Petition, can best be set forth with more and necessary detail in a discussion following the lines of the Specification of Errors, *supra*.

I.

The Revenue Act of 1918 did not impose an income tax at the rates prescribed therein, with respect to the incomes of United States citizens who during that year resided in the Philippine Islands, or require that such citizens file income tax returns for that year elsewhere than with the Collector of Internal Revenue at Manila.

The Respondent contends that both the Revenue Act of 1916 and the Revenue Act of 1918 imposed income taxes with respect to the net income for the year 1918 of individuals, citizens of the United States, who resided during that year in the Philippine Islands. The Respondent contends further that said two Acts required that each such individual file two returns for that year, the first with the Collector of Internal Revenue at Manila, showing thereon the amount of his income tax liability according to the rate and other provisions of the 1916 Act, and the second with the Collector at Baltimore, showing on the latter the amount of income tax resulting from application of the rate and other provisions of the 1918 Act, and that both returns were required to be of the individual's net income from all sources.

The petitioner contends that no income tax was imposed by the Revenue Act of 1918 with respect to the net income of such individual for that year, and that he was required only to file a single return for that year with, and to pay all of his income tax to, the Collector at Manila, computing his said tax in accordance with the provisions of and at the rates prescribed in the Revenue Act of 1916, which the Revenue Act of 1918 continued in effect for said year 1918 as to all residents of the Philippine Islands; and that said 1916 Act stated all of the income tax liability of such individual for the year 1918. There was no amendment of the 1916 Act, in 1917 or 1918, which changed the income tax rate provisions of said 1916 Act.

In Section 15 of the Revenue Act of 1916, the Philippines were declared to be within the "United States" and the income tax provided for by the Revenue Act of 1916 was imposed by Section 1(a) thereof upon each individual, a resident of the Philippines, upon the basis that he was a resident of the United States. But any income tax imposed upon such individual by the Revenue Act of 1918 must have been imposed solely upon the basis that he was a United States citizen since, as defined in Section 1 of the 1918 Act, the Philippines were geographically not within the United States, and such individual was, therefore, not a resident of the United States.

Section 261 of the Revenue Act of 1918 provided clearly, definitely and *specifically* that in the Philippine Islands *the income tax* should be levied, assessed, collected and paid in accordance with the provisions of the Revenue Act of 1916 as amended. Also that returns should be made and taxes paid under Title I, income tax provisions, of the 1916 Act in the Philippine Islands, by *every individual* who was a *resident* of those Islands.

By Section 1400 of the Revenue Act of 1918 certain parts of earlier Revenue Acts, including said Title I of the Revenue Act of 1916, were repealed. But all of said parts were so repealed "subject to the limitations provided in subdivision (b)" of said Section 1400, one of which was that "Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917" should remain in force for the assessment and collection of the income tax in the Philippine Islands, except as it might be otherwise provided by the legislature of those Islands.

To treat this provision for assessment and collection of tax in the Philippines otherwise than as a provision respecting prospective taxation must be, we submit, to leave it as a clause bare of any purpose whatever, since provision for making assessments and collections in all situations where the tax liability had already accrued had previously

been made in the first sentence of said Section 1400(b) reading: "Such parts of acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder," etc.

The power, granted to the Philippine legislature by said Sections 261 and 1400(b) of the Revenue Act of 1918, to amend the income tax provisions of the Revenue Act of 1916 so continued in effect in the Islands, was not exercised until March 7, 1919 when that legislature passed its Act No. 2833, certain sections of which are printed in the Appendix hereto, to take effect January 1, 1920.

A local income tax law was not among those laws which the legislature of the Philippine Islands was authorized to enact. Organic Act of August 29, 1916, 39 Stat. 548, Sec. 11. By Section 19 of that Act it could enact no law which the Congress could not annul.

By the Naval Appropriations Act of July 12, 1921, 42 Stat. 123, the Congress granted to the Virgin Islands the power to enact a local income tax law. It granted similar power to Porto Rico by the Act of March 4, 1927, 44 Stat. 1418, c. 503. But no such power was ever granted to the Philippine Islands.

The Congress having provided clearly and *specifically* by said Sections 261 and 1400(b) of the Revenue Act of 1918 for the filing by every individual, a resident of the Philippine Islands, of his income tax return for the year 1918 with, and, pursuant to such return, for payment by him of his income tax to the Collector at Manila (see Section 23, Revenue Act of 1916), upon the basis of his residence there, it is necessary that an equally or more clear and *specific* provision to the contrary be found elsewhere in the 1918 Act if it is to be held that such individual was required to file another return with, and to pay an additional tax for that year to the Collector at Baltimore, upon the basis of the individual's United States citizenship.

The Respondent's whole case in relation to this point stems from the use *generally* in Sections 210 and 211(a) of the Revenue Act of 1918 of the words "every individual," and from the *general* direction in Section 227(b) of that Act that non-residents of the United States file their returns with the Collector of Internal Revenue at Baltimore.

The Supreme Court has held that taxes are not imposed upon the basis of citizenship alone unless they are *clearly* so imposed. *United States vs. Goelet*, 232 U. S. 293. The statute which the Court interpreted in that case used the *general* words "any citizen" almost identically as the *general* words "every individual" were used in Sections 210 and 211(a) of the Revenue Act of 1918. The petitioner submits that to the said words "every individual" as used in those sections there should be given a construction in this case similar to that which was given to the words "any citizen" in the said *Goelet* case.

By the "in lieu thereof" provision in said Section 1400(b) of the Revenue Act of 1918, the Congress made it clear that it did not impose income tax under both the 1918 Act and the amended 1916 Act at the same time, in the Philippine Islands.

Cook v. Tait, 265 U. S. 47, is not an authority against the basic contention of the petitioner here since in that case, involving the Revenue Act of 1921, *Cook*, a citizen of the United States who resided permanently in Mexico, did not argue and the Court did not decide any question as to the intended application of the income tax provisions of that Act to his income derived from sources in Mexico. It was decided there only that Congress had power to tax such income. The later Revenue Acts, since 1927, make it clear that residence is the only basis for imposing the income tax. Until 1928, whenever the question was raised, the Court had to determine whether the Act showed that the Congress *clearly* intended taxing the income of the citi-

zen, non-resident of the United States, when his income was derived from sources outside the United States.

In *Cotterman v. United States,* 62 Ct. Cl. 415, in which this Court denied certiorari, the taxpayer's case was not adequately presented. The decision in that case may be said to have been rested entirely upon the credit provision in Section 222(a)(1) to which we shall hereinafter refer. The *Cook* case, *supra,* referred to by the Court of Claims in its opinion, did not decide the question involved in the *Cotterman* case.

In the present case Congress having provided *specifically* for the year 1918 for the filing of returns and the payment of taxes in Manila, pursuant to the 1916 Act, by all individuals including United States citizens who resided there, the rule of *expressio unius est exclusio alterius* is applicable. For this reason such individuals were not required by the *general* provisions of the 1918 Act to file returns and pay income taxes elsewhere than in Manila.

It is fundamental that the taxed class is never larger than the tax imposing section of the statute, strictly construed in the light of later definitely limiting sections of the statute, makes it. *United States v. Stroop,* 109 F. (2d) 891, 893.

The *general* provision in Section 227(b) of the 1918 Act, regarding the filing of returns with the Collector at Baltimore, by individuals, non-residents of the United States, did not require that residents of the Philippines, who by the rule in Section 1 of that Act were non-residents of the United States, file their returns in Baltimore, since Section 261 of that Act, which must be read with Sections 8(b) and 23 of the Revenue Act of 1916, *specifically* directed that they file their returns where they resided. This meant, as to the taxpayer in this case, in Manila.

The principal question whether tax was imposed by the 1918 Act upon residents of the Philippines, who were also citizens of the United States, is a question which must be

answered without reference to said Section 227(b). That Section may not be cited in support of an affirmative answer to the said principal question, since certainly the filing of returns in Baltimore was required only of those non-residents of the United States upon whom the tax was imposed. For the same reason said principal question must be answered without reference to Section 222 of the 1918 Act, containing provision for credit possibly allowable to such non-residents of the United States, and that Section also may not be cited in support of an affirmative answer to the said principal question. In 1918 Porto Rico and the Philippines were only two of eight island possessions of the United States. Said Section 222 was intended to apply only to the other six. The same must be said in answer to any contention by the Respondent as to the scope of application of said Section 222 based upon any change made in the final draft of said Section from the form in which it appeared first in the House Bill. See amendment recommended by the Conference Committee and referred to by the Circuit Court in its opinion in *Helvering v. Campbell*, *infra*.

During the entire period since the occupation of the Philippine Islands the Congress has not imposed any tax in the Philippine Islands upon products or residents thereof, for the benefit of the United States. 34 Op. Atty. Gen. 550, 553, October 17, 1925. Cf. Coconut Oil Processing Tax Act of May 10, 1934, 48 Stat. 763, as amended by Act of February 10, 1939, I. R. C. Section 2476.

The assumption which was the basis upon which *Lawrence v. Wardell*, 273 Fed. 405, was decided, viz. that Title I, income tax provisions, of the Revenue Act of 1916 was converted into a local law when the Philippine legislature by the 1917 and 1918 Acts was granted the power to amend said 1916 Act as applicable there, was clearly an erroneous assumption. Cf. *Asiatic Petroleum Co. v. Insular Collector of Customs*, 297 U. S. 666, 669, 670. The Court there

ruled upon the application as a local law of a similar provision in the Philippine Tariff Act of August 5, 1909, 36 Stat. 130, 176, Chap. 8. The decision in said *Lawrence* case had nothing except said erroneous assumption to support it. Whether after 1918, and the passage of Act 2833 by the Philippine legislature, effective after 1919, there was any change in the status of income taxpayers in the Philippines, is a question not presented for decision in the present case.

Until the recent Board of Tax Appeals cases arose, the *Lawrence* case had been cited only once, i.e. in *Neuss, Hesslein and Co., Inc. v. Edwards,* 24 F. (2d) 989. Even in that case it was not cited as an authority holding that United States citizens, who during the year 1918 resided in the Philippine Islands, were taxable at the rates prescribed by said 1918 Act. On the contrary, on page 991 of the opinion in that case, the Court said:

> "Undoubtedly Congress could have made the act of 1917 (40 Stat. 300) and 1918 (40 Stat. 1057) applicable to Porto Rico and the Philippine Islands, but evidently it did not desire to include them in the heavier taxes imposed upon American corporations which were necessitated by the expenses of carrying on the World War."

Judgment in that case was affirmed in 30 F. (2d) 620, C. C. A. 2. In that case it was held that no undue discrimination against domestic corporations resulted from the failure of Congress to tax under the 1918 Act the incomes of corporations organized under Philippine law, but which had transactions within the United States.

Section 261 of the Revenue Act of 1918 provided unqualifiedly for the application in the Philippine Islands of the income taxing provisions of the Revenue Act of 1916. The Organic Act of August 29, 1916, 39 Stat. 547, Section 5, had provided, and when the Revenue Act of 1918 was approved said Organic Act continued to provide, that later United States statutes should apply in the Philippine

Islands only when they contained specific provision for such application. The Revenue Act of 1918 contained no such specific provision for application of the taxing provision of that Act in the Philippine Islands. There was such required specific provision relating to Philippine application in Section 23 of the Revenue Act of 1916.

On December 2, 1933, the Attorney General of the United States, in 37 Op. Atty. Gen. 360, 363, advised that the provisions of the National Industrial Recovery Act, 48 Stat. 211, June 16, 1933, which were not made expressly applicable in the Philippine Islands, were not applicable there, and cited said Section 5 of said Organic Act as requiring that conclusion. He had held to the same effect in former opinions. Cf. 34 Op. Atty. Gen. 550, 553, dated October 17, 1925.

The clause in Section 5, Title I, War Income Tax, Revenue Act of 1917, expressly making that Act not applicable in the Philippine Islands, was unnecessary. Without the enactment of that clause that Act would have been inapplicable there by virtue of the provision in said Section 5 of said Organic Act.

There is no implication that Sections 210 and 211(a) of the 1918 Act were intended to impose tax upon the incomes of United States citizens who during 1918 resided in the Philippines because Section 260 of the Revenue Act of 1918 provided that an individual who was a citizen of a possession, but not otherwise a citizen of the United States and who was not a resident of the United States, should be subject to tax under that Act only on income from sources within the United States. Said Section must be read with the immediately following and complementing Section 261, which provided *specifically* where every individual who resided in the Philippine Islands should file his return and pay his tax.

Section 262 of the Revenue Act of 1921 clearly implies that United States citizens who resided in the Philippine

Islands in 1918 were not subject to tax under the 1918 Act. That Section provided, as to any domestic corporation, or any United States citizen regardless of the place of his residence, if it or he derived 80 per cent or more of its or his income from sources within a possession, and 50 per cent or more of its or his income from the active conduct of a business within a possession for a period of three years, that it or he could treat all income from the possession, in so far as the 1921 Act was concerned, as entirely tax free. If the conditions were met, the Section applied to income derived from sources within any United States possession except the Virgin Islands. This of course meant Porto Rico, the Philippines, Panama Canal Zone, Guam, Tutuila, Wake and Palmyra. Said Section 262 was not designed and enacted especially for the benefit of United States citizens who resided in the Philippines since it did not refer specifically to either that possession or such residents of it. Clearly those who stood to benefit largely from enactment of said section were domestic corporations, in a situation like that of the appellant in *Neuss, Hesslein & Co. v. Edwards, supra,* and citizens who resided in the United States and were engaged in trade or business in one or more of said possessions, but who retained domicil in the United States.

How the Respondent interpreted the applicability of the Revenue Acts of 1916 and 1918 in relation to the Philippine Islands, on April 17, 1919 when he promulgated his Regulations 45, is indicated by the following which is quoted from Article 1131 of his said Regulations:

> "In Porto Rico and the Philippine Islands the Revenue Act of 1916, as amended, is in force and the Revenue Act of 1918 is not. See also Section 1400 of the statute."

It is only since about the year 1938 that Respondent has attempted to administer the provisions of the Revenue Act of 1918 in the Philippines.

In Article 1132 of his said Regulations, after stating a different rule as to the applicability of the said two Acts in Porto Rico, the Respondent said that "the same principles apply in the case of the Philippine Islands." But in said Article 1132 he referred only to Section 222 of the statute as supporting that conclusion. We have shown, *supra*, p. 15, that when an affirmative answer is being sought to the principal question in dispute, viz. whether tax was imposed by the 1918 Act upon residents of the Philippines who were also citizens of the United States, there is a clear begging of the question when the provisions of said Section 222, relating to the credit possibly allowable to such individuals as non-residents of the United States, is cited as supporting such affirmative answer.

The scope of a statute cannot be enlarged by regulation. A regulation which goes beyond the statute is void. *Iselin v. United States*, 270 U. S. 243, 250; *Janney v. Commissioner*, 108 F. (2d) 564, 567, C. C. A. 3.

A doubtful tax does not exist. *Pennsylvania Co. v. McClain*, 107 Fed. 367, 370.

In the opinion by the Circuit Court of Appeals in its dealing with the matter involved under this Point I, one of its most obvious errors was in considering the *general* words "every individual" used in Sections 210 and 211(a) of the 1918 Act as controlling, and in not giving effect to other contrary, *specific* provisions of Sections 261 and 1400 of that Act to which we have referred, which clearly indicated that application for that year of the tax rates prescribed by that Act to incomes of residents of the Philippine Islands and Porto Rico was not intended. This matter was emphasized below especially but not solely in the Petition for Rehearing. (R. 74, 75.) *Specific* provisions have always been recognized under our law as controlling over inconsistent *general* provisions, in construing and applying any statute. *Kepner v. United States*, 195 U. S. 100, 125; *Helvering v. New York Trust Co.*, 292 U. S. 455, 464. When

the Congress went to the length to which it did go in enacting said *specific* provisions it intended them to be given effect. By the erroneous decision of the Circuit Court in this important respect it so far departed from or sanctioned departure by a lower Court from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

The petitioner therefore respectfully submits that the tax rate provisions of the Revenue Act of 1918 were not intended to apply and did not apply in the Philippine Islands. See especially on principle, the *Goelet* case, *supra*; also the *Asiatic Petroleum Co.* and *Neuss, Hesslein & Co., Inc.* cases, *supra*. The Board of Tax Appeals reasoned soundly as to the income tax in controversy before it in the instant case for the year 1917. As to the tax for the year 1918 it was misled by the erroneous decision in the *Lawrence* case, *supra*.

II.

The authority to administer the income tax law for the year 1918 in the Philippine Islands was vested solely in the internal revenue officers there.

By Section 261 of the Revenue Act of 1918 there was continued in effect in the Philippines the provision of Section 23 of the Revenue Act of 1916, that the administration of the law and collection of the income tax imposed in the Philippine Islands should be by the appropriate internal revenue officers of the government there; also the provision of said Section 23 vesting jurisdiction of income tax controversies concerning the tax of residents in the courts of the Islands. See also Section 1400(b) of the Revenue Act of 1918. The authority so *specifically* granted to said internal revenue officers of the Philippine Islands, under the well accepted rule of construction, should be held to be controlling notwithstanding any such authority granted to the Respondent elsewhere *generally* in the statutes. Cf.

Kepner v. United States and *Helvering v. New York Trust Co., supra.*

In other comparable situations, when the Congress has desired to have the Respondent take part in the determination and collection of tax in a possession, it has specifically authorized and directed him to do so. See as instances:

In Porto Rico:

Act of April 12, 1900, c. 191, Sec. 3, 31 Stat. 77;
Act of June 29, 1906, c. 3613, 34 Stat. 620;
Act of March 4, 1927, c. 503, Sec. 3, 44 Stat. 1418.

In Virgin Islands:

Act of May 26, 1936, c. 450, Sec. 3, 49 Stat. 1372; also c. 699, Sec. 36, page 1816.

The provision in said Section 23 of the Revenue Act of 1916 for the administration of the law and collection of the tax imposed in the Philippine Islands by the appropriate internal revenue officers there was similar to that in such other Acts of the Congress as the following:

Customs Act of March 8, 1902, 32 Stat. 54;
Navigation Laws of April 29, 1908, c. 152, Sec. 5, 35 Stat. 70;
Narcotics Act of December 17, 1914, 38 Stat. 785, 787, Sec. 2(d);
Act of August 29, 1916, 39 Stat. 548;
Immigration Act of February 5, 1917, 39 Stat. 874;
Customs Duties for Virgin Islands, Act of March 3, 1917, 39 Stat. 1133;
National Defense Act of June 15, 1917, 40 Stat. 217, 231;
Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, 425;
Act of June 17, 1930, c. 497, Sec. 301; 46 Stat. 686.

The 1918 Act would not have been constructed as it was if the intention of the Congress had been to allocate a

total tax, part to expenses of the government of the Philippine Islands and part to expenses of the home government of the United States. Instead, that Act would have been made to provide, as it very simply could have been, for the payment of all tax in the Philippine Islands and for transmitting part thereof to the United States, conversely as e.g. custom duties have long been authorized to be collected in the United States and the funds set apart for the Philippines. Section 24 of the Organic Act, *supra*, provided for the continuous or periodical balancing and settling of accounts between the two governments. Cf. Act of May 10, 1934, 48 Stat. 763, as amended by Act of February 10, 1939, I. R. C. Sec. 2476.

III.

The assessment of the deficiency in controversy was barred many years ago by a statute of limitations.

The taxpayer, the original transferor in this case, who resided in 1918 in the Philippine Islands, filed his income tax return for that year with the Collector of Internal Revenue at Manila on February 20, 1919 (R. 21, 33), as required by Section 261 of the Revenue Act of 1918 and Section 8(b) of the Revenue Act of 1916. His said return was on the approved printed income tax form known as No. 1040, designed and supplied to him by the government for his use. (Petitioner's Exhibit 2, R. 77.) It showed on its face that it was a return for the calendar year 1918. In answer to the question on the return concerning citizenship there was written the word, "American." On the face of said return, also in the printed form of verification thereof which the taxpayer executed, reference was made to the Act of Congress "approved September 8, 1916, as amended by Act of October 3, 1917." This met the requirement in Section 261 of the 1918 Act. In the similar printed form of return supplied to the taxpayer for 1917 (Peti-

tioner's Exhibit 1, R. 77), there were not used the said words "as amended by Act of October 3, 1917" which were used in said 1918 form.

The said 1918 return having been so filed, the applicable statute of limitations barred the assessment and collection of the deficiency in controversy herein five years after said February 20, 1919. This is so if the applicable statutory provision was that of either Section 250(d) of the Revenue Act of 1918, or Section 250(d) of the Revenue Act of 1921. If the time allowed for making the assessment was three years, as prescribed by Section 9(a) of the Revenue Act of 1916, or Section 9(a) of Act 2833 of the Philippine legislature, the final date for making the assessment was February 20, 1922. Section 261 of the Revenue Act of 1921 provided that in the Philippine Islands the income tax should "be levied, assessed, collected and paid as provided by law prior to the passage of this Act."

This is not a case in which the taxpayer filed no return. Cf. *Germantown Trust Co. v. Commissioner*, 309 U. S. 304, 307, 309, 310; *Marshall's Heirs v. Commissioner*, 111 F. (2d) 935, C. C. A. 3; *Florsheim Bros. Dry Goods Co., Ltd. v. United States*, 280 U. S. 453, 462; *Zellerbach Paper Co. v. Helvering*, 293 U. S. 172, 180; *Balkan National Insurance Co. v. Commissioner*, 101 F. (2d) 75, 78, C. C. A. 2; *Stearns Co. v. United States*, 291 U. S. 54, 62; 5 *Paul & Mertens Federal Income Taxation*, Par. 50.12. The taxpayer in the instant case filed a return of his income from all sources, not a tentative but a complete return, and he intended it to be made the basis for an assessment.

The case of *Helmuth Heyl*, 34 B. T. A. 233, which was cited by the Board (R. 36), is not in point since there no return was filed. *Eli Kirk Price*, 23 B. T. A. 1192 (R. 36), may not be considered an authority since the decision in *Germantown Trust Co. v. Commissioner, supra.* In *Emil Peterson*, 45 B. T. A. 624 (R. 36), only a small deficiency was involved, for the year 1918. A petition for review

of that decision was erroneously filed with the Court for the Ninth Circuit and there dismissed on Respondent's motion, for irregularities in procedure.

When the making of an assessment against a taxpayer has been barred during the taxpayer's lifetime, his liability may not be assessed against any transferee of property from him at or after his death. *Kentucky Oil Corporation*, 21 B. T. A. 1150, 1163, appeal dismissed 59 F. (2d) 1055, C. C. A. 6.

By not specifying, in Section 280(a) of the Revenue Act of 1926, any period of limitation for assessment of any liability of the taxpayer for tax under the Revenue Act of 1926, and Revenue Acts prior thereto, against a transferee *of a transferee* of property from the taxpayer, as was done later, but not for the prior years, by Section 311(b) of the Revenue Act of 1928, the Congress is shown to have intended the assessment of the taxpayer's liability, if any, for the year 1918 only against the initial transferee of property from the taxpayer.

Where the transferor's liability was barred by limitation before the enactment of Section 280(b)(1) of the Revenue Act of 1926, Congress did not intend thereby to reopen cases definitely closed. Sec. 278(e), Revenue Acts of 1924 and 1926.

The Collector of Internal Revenue at Baltimore was specifically informed by letter sent by the taxpayer in August, 1923, to said Collector concerning his income tax return for the year 1918 (R. 28).

The Circuit Court of Appeals for the Fourth Circuit in its opinion in *Helvering v. Campbell*, —F. (2d)—, January 10, 1944, in dealing with the matters which we have discussed so far in our argument herein, committed precisely the same errors which we have specified as committed by the Circuit Court in the instant case. No tax under the 1918 Act was involved in the companion case of *Helvering v. Nell*, which that Court then decided.

IV.

Respondent must be said to have twice heretofore determined in appropriate proceedings that there was no liability for the particular deficiency in controversy herein.

Since the Respondent, both in 1932, in proceedings for determination of the net value of the Charles C. Cole estate subject to Federal estate tax, and again in 1936 in similar proceedings in the Creswell C. Cole estate, did not assert and prove the amount of the deficiency in controversy herein as a liability of either of said estates, and did not allow the amount of said deficiency as a deduction in determining the amount due as such Federal estate tax from either of said estates, the Respondent may not now assess and collect said deficiency and interest thereon, or either of them, against or from the petitioner in this proceeding against her as transferee of a transferee. Based upon said two prior determinations it should be held that the question concerning the deficiency involved herein was closed years ago, under *res adjudicata* or other comparable doctrines.

V.

Petitioner is not now liable as transferee for payment of interest, as held by the Board and the Circuit Court in this case, with respect to any deficiency of the taxpayer, and can incur an interest liability only by withholding payment of the deficiency after and if the decision of the Board of Tax Appeals sustaining the Respondent's determination becomes final. Her maximum interest liability, if any, will be that amount which, when added to the deficiency, will equal the value of the assets shown to have been received by her as transferee.

There is at most only a secondary liability of the petitioner as transferee for payment of the deficiency in controversy. *Oswego Falls Corp.*, 26 B. T. A. 60, affirmed 71 F. (2d) 673. Until the order of the Board of Tax Appeals

herein has been further affirmed, or become final, the primary liability of the taxpayer-transferor for payment of the deficiency will not have been established. The interest from July 1, 1939 which the Respondent would now assess against petitioner as transferee is not a carry over of interest for which the taxpayer-transferor could have been held liable at the time of his death in 1931. Any such item of interest was made uncollectible by the provision in Section 813(a) of the Revenue Act of 1938. That was purely a relief section. No implication arises from its enactment that income tax was intended to be imposed by the 1918 Act upon United States citizens who resided during that year in the Philippine Islands. To obtain the benefit of the relief provided by that section nothing was required of the taxpayer except residence in a possession for more than six months during the taxable year. The same benefit was extended to members of another group whose qualifications were outlined at greater length in that section. It did not impose interest from July 1, 1939, with respect to any deficiency of any taxpayer or transferee. Nor did Section 280(a)(1) of the Revenue Act of 1926 provide for payment by a transferee of any interest except that for the payment of which the transferor was liable as of the time of the transfer. Cf. *Koppers Company v. Commissioner*, 3 T. C.—, No. 7, January 19, 1944, C. C. H. Tax Court Service, Decision 13,687. See also Petitioner's Exceptions (R. 44). No such interest liability of the taxpayer as of that time has ever been conceded or established. The amount of interest, therefore, for payment of which petitioner may become secondarily liable, is only such amount as may accrue against her if she withholds payment of the deficiency after the taxpayer's deficiency liability, if any, may be established by final order in this proceeding.

In its Memorandum *Sur* Decision (R. 47) the Board cited Section 311 of the Revenue Acts of 1932, 1936 and 1938, none of which is applicable to the year now involved.

Section 912 of the Revenue Act of 1924 (enacted as an amendment by Section 602 of the Revenue Act of 1928) did not change the burden of proof rule which the courts have always followed, namely, that he who tries to hold a transferee of property liable for the debt of another must prove that the transferee has come into possession of property of the other of sufficient value to make it possible for him to pay such debt. When the petitioner agreed in the stipulation (R. 24) that she received assets of a value in excess of $30,712.22, no *prima facie* case was established for Respondent that petitioner had received assets of the value of that amount plus interest thereon at some rate not fixed, and for some indefinite period of time after July 1, 1939.

The well recognized rule of evidence applicable in this situation is discussed in such cases as *Kelly v. Jackson*, 6 Peters 622, 629, and *Bailey v. Alabama*, 219 U. S. 219, 234. The cases cited by the Circuit Court in this connection (R. 69) are not in point. Respondent in paragraph 12 of his answer (R. 14) alleged affirmatively that the transferor, Creswell C. Cole, had received from the estate of his deceased father, the transferor, Charles C. Cole, property worth much more than $30,812.22, or the total of the then asserted deficiencies. But this allegation was denied by petitioner in paragraph 12 of her reply (R. 17). A transferee may be held liable to the extent of the value of assets received. *Phillips v. Commissioner*, 283 U. S. 589, 603. The Respondent, who had the burden of proving such extent, proved only $30,712.22 as such value. There was not then shifted to the petitioner the additional burden of proceeding to show exactly how much or little the transferred property was worth on each of the several transfer and distribution dates. That burden remained with the Respondent upon whom general provisions of the law placed it.

CONCLUSION.

It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari should be granted as prayed for.

Respectfully submitted,

T. G. THOMPSON,
Attorney for Petitioner.

APPENDIX.

ORGANIC ACT

39 Stat. 547

Approved August 29, 1916

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

"Sec. 19. * * * all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves power and authority to annul the same."

"Sec. 24. There shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government. * * * He shall perform a like duty with respect to all government branches. * * * As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor General and the Secretary of War an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various provinces and municipalities, and make such other reports as may be required of him by the Governor General or the Secretary of War."

REVENUE ACT OF 1916

39 Stat. 756

Approved September 8, 1916

TITLE I, PART I

"Sec. 8(b). On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of $3,000 or over for the taxable year to the Collector of Internal Revenue for the district in which such person has his legal residence or place of business, or if there be no legal resi-

dence or place of business in the United States, then with the Collector of Internal Revenue at Baltimore, Maryland, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized * * *."

Note: This provision of said Section 8 was not altered by Section 1204(1) of the Revenue Act of 1917 amending said Section 8.

"Sec. 9(a). That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false or fraudulent return, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment * * *."

Note: This provision of said Section 9 was not altered by Section 1205(1) of the Revenue Act of 1917 amending said Section 9.

TITLE I, PART III

"Sec. 15. That the word 'State' or 'United States' when used in this title shall be construed to include any territory, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions."

Note: This Section was not amended by the Revenue Act of 1917.

"Sec. 23. That the provisions of this title shall extend to Porto Rico and the Philippine Islands: provided, that *the administration of the law and the collection of the taxes imposed in* Porto Rico and *the Philippine Islands shall be by the appropriate internal revenue officers of those governments, and all revenues collected in* Porto Rico and *the Philippine Islands thereunder shall accrue intact* to the general governments thereof, respectively. Provided further, that the jurisdiction in this title conferred upon the District Courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of first instance of said Islands * * *." (Italics supplied.)

Note: This Section was not amended by the Revenue Act of 1917.

REVENUE ACT OF 1917

40 Stat. 300

Approved October 3, 1917

TITLE I, WAR INCOME TAX

"Sec. 5. That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively."

REVENUE ACT OF 1918

40 Stat. 1057

Approved February 24, 1919

TITLE I

"Sec. 1. That when used in this Act"—* * *

"The term 'United States' when used in a geographical sense includes only the states, the territories of Alaska and Hawaii, and the District of Columbia";

TITLE II, PART II

"Sec. 210. That in lieu of the taxes imposed by subdivision (a) of Section 1 of the Revenue Act of 1916 and by Section 1 of the Revenue Act of 1917, there shall be

levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates:

"(a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in Section 216: Provided, that in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 6 per centum;

"(b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in Section 216: Provided, that in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum."

"Sec. 211(a). That, in lieu of the taxes imposed by subdivision (b) of Section 1 of the Revenue Act of 1916 and by Section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by Section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following: (Rate and block provisions not copied.)

Note: By Section 5 of the Revenue Act of 1917, the provisions of Section 2 of that Act, referred to above, were made not applicable in the Philippine Islands. See also Record, page 39.

"Sec. 222 (a). That the tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war profits and excess profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States;"

"Sec. 227(b). Returns shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland."

TITLE II, PART IV

"Sec. 250(d). Except in the case of false and fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made." * * *

"Sec. 260. That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources."

"Sec. 261. That *in* Porto Rico and *the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended.*

"*Returns shall be made and taxes shall be paid under Title I of such Act in* Porto Rico or *the Philippine Islands*, as the case may be, *by* (1) *every individual who is a* citizen or *resident of* Porto Rico or *the Philippine Islands* or derives income from sources therein * * *. (Italics supplied.)

"The Porto Rico or Philippine legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively."

TITLE XIV

"Sec. 1400(a). That the following parts of Acts are hereby repealed, subject to the limitations provided in subdivision (b):

"(1) The following titles of the Revenue Act of 1916:

"Title I (called 'Income Tax') * * *

"(3) The following titles of the Revenue Act of 1917:

"Title XII (called 'Income Tax Amendments')

* * * * *

"(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: *Provided, that, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917,* * * * in respect to any period after December 31, 1917: * * * *In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.*

"Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures." (Italics supplied.)

ACT OF PHILIPPINE LEGISLATURE, NO. 2833

Public Laws of the Philippine Islands, Vol. 14

Approved March 7, 1919

Effective January 1, 1920

"Sec. 9(a) All assessments shall be made by the Collector of Internal Revenue and all persons shall be notified of the amount for which they are repectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three

years after said return is due, or has been made, make a return upon information obtained as provided for in this law or any existing law, or require the necessary corrections, to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment." * * *

"Sec. 20. * * * Title I of the Act of the United States Congress approved September eighth, nineteen hundred and sixteen, entitled 'An Act to increase the revenue and for other purposes,' and Title XII of the Act of the United States Congress approved October third, nineteen hundred and seventeen, entitled 'An Act to provide revenues to defray war expenses, and for other purposes,' are hereby superseded, except as herein otherwise provided. * * *"

REVENUE ACT OF 1921

42 Stat. 227

Approved November 23, 1921

TITLE II, PART IV

"Sec. 250(d). The amount of income * * * taxes due under any return made * * * under prior income * * * tax Acts, * * * shall be determined and assessed within five years after the return was filed, * * * and no suit or proceeding for the collection of any such taxes due * * * under prior income * * * tax Acts * * * shall be begun after the expiration of five years after the date when such return was filed * * *. Provided, further, that in the case of * * * failure to file a required return, the amount of tax due may be determined, assessed, and collected, and a suit or proceeding for the collection of such amount may be begun, at any time after it becomes due. * * *"

REVENUE ACT OF 1924

43 Stat. 253

Approved June 2, 1924

TITLE IX

"Sec. 912. In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a

petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax."

Note: Said Section 912 was enacted as Section 602 of the Revenue Act of 1928.

REVENUE ACT OF 1926

44 Stat. 9

Approved February 26, 1926

TITLE II, PART V

"Sec. 278 * * *

"(e). This section shall not * * * authorize the assessment of a tax * * * if at the time of the enactment of this Act such assessment * * * was barred by the statutory period of limitation properly applicable thereto, * * *."

"Sec. 280(a). The amounts of the following liabilities shall * * * be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title * * *:

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income * * * tax Act." * * *

"(b) The period of limitation for assessment of any such liability of a transferee * * * shall be as follows:

"(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer. * * *

"(c) For the purpose of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred." * * *

REVENUE ACT OF 1928

45 Stat. 791

Approved May 29, 1928

TITLE I, C, SUPP. N

"Sec. 311(b). The period of limitation for assessment of any such liability of a transferee * * * shall be as follows:

"(1) In the case of the liability of *an initial transferee* of the property, * * * within one year after the expiration of the period of limitation for assessment against the taxpayer;

"(2) In the case of the liability of *a transferee of a transferee* of the property of the taxpayer, * * * within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer." (Italics supplied.)

REVENUE ACT OF 1938

52 Stat. 447

Effective May 28, 1938

TITLE V

"Sec. 813(a). Income, war-profits, and excess-profits taxes *imposed by* the Revenue Act of 1917 or *the Revenue Act of 1918* for any taxable year shall, in the case of the following taxpayers, be assessed, collected, and paid, without the assessment, collection, or payment of interest incurred prior to July 1, 1939, or of penalties, additional amounts, or additions to tax, incurred prior to the date of the enactment of this Act;

"(1) Individuals who were bona fide residents of a possession of the United States for more than six months during such taxable year and who were taxable as citizens of the United States." * * * (Italics supplied.)

INDEX

CITATIONS

586150—44

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 889

LENORE S. ROBINETTE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Board of Tax Appeals (R. 31–39) (now the Tax Court of the United States) are reported in 46 B. T. A. 1138 and the opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 65–69) is reported in 139 F. 2d 285.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 8, 1943. (R. 63.) A petition for rehearing was denied January 24, 1944. (R. 77.) The petition for a writ of certiorari

was filed April 14, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, as a citizen of the United States, the petitioner's decedent, Charles C. Cohn, was liable to the federal income tax during the taxable year 1918 under Section 210 of the Revenue Act of 1918, even though during that year he resided in the Philippine Islands, derived all of his income from sources within the Islands, and paid a tax thereon to the Philippine Government.

2. Whether the decedent's liability is barred by Section 250 (d) of the Revenue Act of 1921 and cognate provisions of subsequent Acts.

3. Whether the petitioner was liable for interest on the deficiency from July 1, 1939, under Section 813 of the Revenue Act of 1938.

STATUTES AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra*.

STATEMENT

The petitioner is the transferee of the transferee of the assets of one Charles C. Cohn, deceased. (R. 31.) The Commissioner determined that she was liable as such transferee to pay income and excess profits tax deficiencies due from the decedent in his lifetime as follows (R. 32):

Year:	*Income tax*	*Excess Profits tax*
1917	$1,408.83	$1,389.01
1918	27,914.38	---------

The decedent was a citizen of the United States who resided at Manila, Philippine Islands, from 1903 to 1919. He returned to the United States in 1919 and changed his name to Cole. His income in 1917 and 1918 was principally derived from the practice of law at Manila. He filed income tax returns with the Philippine Collector of Internal Revenue at Manila for the taxable years 1917 and 1918 under the Revenue Act of 1916, as amended by the War Revenue Act of 1917, but none in the United States. At his death in 1931 assets having a value in excess of $30,712.22 were distributed to his son. Upon the latter's death in 1935, assets valued in excess of $30,712.22 were distributed to his widow, the petitioner here. (R. 32–33.)

The Board of Tax Appeals (now the Tax Court of the United States) held that the decedent was not liable to the United States for the federal income tax in the taxable year 1917 under the Revenue Act of 1916, as amended, but was liable for the excess profits tax in that year under the Revenue Act of 1917, although only in respect of a portion of the income he had derived from sources within the Islands. The Board also held that the decedent was liable for the income tax for the taxable year 1918 under the Revenue Act

of 1918. (R. 34–40.) Thereupon, the Tax Court expunged the income tax deficiency which the Commissioner had determined against the petitioner as such transferee for the year 1917, as also the excess profits tax deficiency, except $3.21 thereof, but redetermined the petitioner's income tax liability as such transferee for the year 1918 in the sum of $27,914.38, which is the amount of the Commissioner's determination, together with interest thereon from July 1, 1939. (R. 45.) The court below affirmed the decision of the Tax Court (R. 63), and thereafter denied a petition for rehearing (R. 77).

ARGUMENT

We submit that the decision below is correct and that there is no occasion for further review.

1. The theory of the petition is that a citizen of the United States who resided during 1918 in the Philippine Islands, and who derived all of his income from sources within the Philippine Islands, and was taxed there upon his income for the benefit of the Islands, was not subject, in addition, to the tax imposed upon the income "of every individual" by Section 210 of the Revenue Act of 1918 (Appendix, *infra*). That theory has been consistently rejected. *Lawrence* v. *Wardell*, 273 Fed. 405 (C. C. A. 9th); *Cotterman* v. *United States*, 62 C. Cls. 415, certiorari denied, 273 U. S. 732; *Helvering* v. *Campbell*, 139 F. 2d 865 (C. C. A. 4th). There is no decision to the contrary.

It was clearly the intention of Congress to provide a separate income tax for the Philippine Islands and to appropriate the revenues to the governmental administration of the Islands. Sections 261 and 1400 (b), Revenue Act of 1918 (Appendix, *infra*). It is equally clear that Congress did not intend to relieve a citizen of the United States from the payment of his share of the revenues needed by the Federal Government, merely because he was liable to the tax imposed for the benefit of the Philippine Islands. The broad reach of Section 210 is emphasized by the fact that, in order to afford a degree of relief to citizens of the Philippine Islands who were not otherwise citizens of the United States, Congress thought it necessary to make specific provision in Section 260 of the Revenue Act of 1918 (Appendix, *infra*). That an ordinary citizen is taxable despite his payment of taxes to the Philippine Islands is further clearly indicated by the fact that he is allowed a credit for the Philippine Islands tax by Section 222 (a) (1) of the Revenue Act of 1918 (Appendix, *infra*). See also Articles 1131, 1132 and 1133 of Treasury Regulations 45 (Appendix, *infra*).

2. The limitations question is based upon the erroneous premise that only one return was required and that it was properly filed. Where, as here, two taxes are imposed and two returns required, it is now settled that the filing of but

one return, addressed to but one of the liabilities, does not serve to avoid the default. *Commissioner* v. *Lane-Wells Co.*, No. 115, October 1943 Term, decided February 14, 1944.

Since no return was filed with respect to the tax here involved, collection may be made at any time. See Section 250 (d) of the Revenue Act of 1921 and cognate provisions of subsequent Acts (Appendix, *infra*).

3. Petitioner is in error in asserting that her liability as a transferee does not commence until the decision in the instant case becomes final. She became liable when the assets were transferred, leaving the tax unsatisfied. The statute to which petitioner resorted in initiating this proceeding in the Board of Tax Appeals "provides the United States with a new remedy for enforcing the *existing* 'liability at law or in equity' " [italics supplied]. *Phillips v. Commissioner,* 283 U. S. 589, 594. The existing liability included the tax and incidental interest. Since interest did not cease upon the taxpayer's death, that event has no bearing here.

Petitioner acquired the assets in 1936 (R. 33), but by reason of the provisions of Section 813 of the Revenue Act of 1938 (Appendix, *infra*), she is liable for interest only from July 1, 1939.

Whether the value of the assets received as transferee was sufficient to cover the interest is

not positively shown, but it was stipulated that petitioner received assets of a value in excess of the deficiency (R. 33). The court below held that this made a *prima facie* case under Section 1119 (a) of the Internal Revenue Code. There is no decision to the contrary.

CONCLUSION

For the reasons stated the petition for certiorari should be denied.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
CARLTON FOX,
Special Assistants to the Attorney General.

MAY, 1944.

APPENDIX

Revenue Act of 1918, c. 18, 40 Stat. 1057:

SEC. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates:

* * * * *

SEC. 222. (a) That the tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and

* * * * *

SEC. 260. That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.

SEC. 261. That in Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in ac-

cordance with the provisions of the Revenue Act of 1916 as amended.

Returns shall be made and taxes shall be paid under Title I of such Act in Porto Rico or the Philippine Islands, as the case may be, by (1) every individual who is a citizen or resident of Porto Rico or the Philippine Islands or derives income from sources therein, and (2) every corporation created or organized in Porto Rico or the Philippine Islands or deriving income from sources therein. An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands but derives income from sources therein, shall be taxed in Porto Rico or the Philippine Islands as a nonresident alien individual, and a corporation created or organized outside Porto Rico or the Philippine Islands and deriving income from sources therein shall be taxed in Porto Rico or the Philippine Islands as a foreign corporation. For the purposes of section 216 and of paragraph (6) of subdivision (a) of section 234 a tax imposed in Porto Rico or the Philippine Islands upon the net income of a corporation shall not be deemed to be a tax under this title.

The Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively.

* * * * *

SEC. 1400. * * *

(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued

and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: *Provided,* That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917: * * *.

Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures.

Revenue Act of 1921, c. 136, 42 Stat. 227:

SEC. 250. * * *

(d) The amount of income, excess-profits, or war-profits taxes due under any return made under this Act for the taxable year 1921 or succeeding taxable years shall be determined and assessed by the Commissioner within four years after the return was filed, and the amount of any such taxes due under any return made under this Act for prior taxable years or under prior income, excess-profits, or war-profits tax Acts, * * * shall be determined and assessed within five years after the return was filed, * * * *Provided further,* That in the case of a false or fraudulent return with intent to evade tax, or of a failure to file a required return, the

amount of tax due may be determined, assessed, and collected, and a suit or proceeding for the collection of such amount may be begun, at any time after it becomes due: * * *.

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 813. REMISSION OF INTEREST AND PENALTIES ON TAXES IMPOSED BY THE REVENUE ACTS OF 1917 AND 1918 UPON CITIZENS IN A POSSESSION OF THE UNITED STATES AND CERTAIN DOMESTIC CORPORATIONS.

(a) Income, war-profits, and excess-profits taxes imposed by the Revenue Act of 1917 or the Revenue Act of 1918 for any taxable year shall, in the case of the following taxpayers, be assessed, collected, and paid, without the assessment, collection, or payment of interest incurred prior to July 1, 1939, or of penalties, additional amounts, or additions to tax, incurred prior to the date of the enactment of this Act:

(1) Individuals who were bona fide residents of a possession of the United States for more than six months during such taxable year and who were taxable as citizens of the United States; and

(2) Persons who for such taxable year would have been entitled to the benefits of section 262 of the Revenue Act of 1921 had such section formed a part of the Revenue Act of 1917 or the Revenue Act of 1918.

(b) If, in the case of taxpayers described in subsection (a), any tax referred to in such subsection is not paid on or before June 30, 1939, then, notwithstanding the provisions of subsection (a) of this section, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from such date until it is paid.

(c) No distraint or other proceeding for the collection of such taxes shall be made, begun, or prosecuted prior to July 1, 1939.

(d) Any interest, penalties, additional amounts, or additions to tax paid within two years preceding the date of the enactment of this Act by any taxpayer described in subsection (a) with respect to income, war-profits, or excess-profits taxes imposed by the Revenue Act of 1917 or the Revenue Act of 1918 for any taxable year, shall be refunded or credited without interest, if claim therefor is filed by such taxpayer prior to July 1, 1939.

Internal Revenue Code:

SEC. 1119. PROVISIONS OF SPECIAL APPLICATION TO TRANSFEREES.

(a) *Burden of proof.*—In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

Treasury Regulations 45 (original as well as 1920 ed.):

ART. 1131. *Income tax in Porto Rico and Philippine Islands.*—In Porto Rico and the Philippine Islands the Revenue Act of 1916, as amended, is in force and the Revenue Act of 1918 is not. See also section 1400 of the statute. No credit against net income is allowed individuals and no deduction from gross income is allowed corporations with respect to dividends received from a foreign corporation (foreign with respect to the United States) taxed in Porto Rico or the Philippines, but

having no income from sources within the United States.

ART. 1132. *Taxation of individuals between United States and Porto Rico and Philippine Islands.*—(*a*) A citizen of the United States who resides in Porto Rico, and a citizen of Porto Rico who resides in the United States, are taxed in both places, but the income tax in the United States is credited with the amount of any income, war profits and excess profits taxes paid in Porto Rico. See section 222 of the statute and articles 381–384. (*b*) A resident of the United States, who is not a citizen of Porto Rico, is taxable in Porto Rico as a nonresident alien individual on any income derived from sources within Porto Rico, but the income tax in the United States is credited with the tax paid in Porto Rico. (*c*) A resident of Porto Rico, who is not a citizen of the United States, is taxable in the United States as a nonresident alien individual on any income derived from sources within the United States, and receives no credit. See also section 260 and article 1121. The same principles apply in the case of the Philippine Islands.

ART. 1133. *Taxation of corporations between United States and Porto Rico and Philippine Islands.*—(*a*) A United States corporation which derives income from sources within Porto Rico, (*b*) a Porto Rico corporation which derives income from sources within the United States, and (*c*) a corporation of a foreign country which derives income both from sources within Porto Rico and from sources within the United States, are all taxed in both places. In the case of the United States corporation the

income, war profits and excess profits taxes in the United States are credited with the amount of any income, war profits and excess profits taxes paid in Porto Rico. In the case of the Porto Rico corporation there is no such credit. See section 238 of the statute and article 611. The corporation of the foreign country deriving income from both places is subject to no double taxation so far as the United States and Porto Rico are concerned. For the purpose of withholding a Porto Rico corporation is a foreign corporation. See section 237 and article 601. The same principles apply in the case of the Philippine Islands.

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(15)

In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 889.

LENORE S. ROBINETTE,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

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REPLY BRIEF FOR PETITIONER.

Replying to Respondent's contention on pages 5 and 6 of his Brief, based upon this Court's decision, on February 14, 1944, in *Commissioner v. Lane-Wells Co.*, No. 115, October Term, 1943.

The income tax return for the year 1918 which the taxpayer in the present case filed with the Collector of Internal Revenue at his residence in Manila reported all of the information which Respondent needed in determining every possible income tax liability of the taxpayer for that year. The return filed in the *Lane-Wells* case did not contain all of such information needed there and it was because it did not that the Court in that case held that assessment of the deficiency had not been barred by the statute of limitations. (Advanced Opinions, p. 457.) It certainly was not held there that Respondent's right to make assessment continued indefinitely in a case where

as here all of the necessary information for determination of the amount of the tax in dispute was shown on the required return which was filed.

In the present case, if the information and figures in Respondent's statement (Petitioner's Exhibit 4, R. 30), which shows the basis for his determination, are compared with those in the taxpayer's return (Petitioner's Exhibit 2, filed separately, R. 77), it will appear clearly that Respondent's said statement was made up from the return, and entirely from the information therein contained.

Petitioner submits that for the year 1918 not more than the one return which was filed was required to be filed by the taxpayer in the present case; and further that the decision in said *Lane-Wells* case falls short of supporting the contention for which Respondent cites it.

Respectfully submitted,

T. G. THOMPSON,
Attorney for Petitioner.

In the Supreme Court of the United States

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PETITION FOR REHEARING.

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PETITION FOR REHEARING.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner named above respectfully petitions this Court to grant a rehearing of and to reconsider her petition for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit; to reverse or vacate this Court's decision or judgment of May 22, 1944; to grant said former petition and to direct issuance of the writ. The petitioner respectfully represents to the Court in support of this petition, the following:

1. Copies of Respondent's brief in opposition to the former petition were served on May 12, 1944. As soon as possible thereafter petitioner's counsel prepared a reply brief. The Clerk of this Court received the required number of printed copies thereof on May 23, 1944. Also on that date copies were served upon counsel for the Re-

spondent. There was then, as was thought, not an untimely filing of the reply brief. But the petition having been denied the day before, petitioner considers that the Court's denial must have been influenced by its not having before it from the petitioner any answer to a certain case cited in the opposition brief. All other cases cited in the opposition brief had been anticipated and answered in petitioner's opening brief.

We refer to the Solicitor General's reference on page 6 of his brief to the case of *Commissioner v. Lane-Wells Co.*, No. 115, October Term, 1943, decided by this Court on February 14, 1944, Law. Ed. Advance Opinions, Vol. 88, No. 8, p. 455, and to the Solicitor's reliance upon that decision as an authority in point supporting his contention that the statute of limitations had not barred assessment of the income tax deficiency in controversy in the present case. We believe this Court would not have denied petition for the writ in the present case if it had noted, or had had before it at the time the statements made in petitioner's reply brief concerning the difference in essential facts between that case and the present case.

Petitioner therefore now respectfully requests that the Court receive said reply brief, copies of which have been held in the Clerk's office pending the filing of this petition, and that the Court consider all of the statements made in said reply brief as if copied in full herein. When said *Lane-Wells* decision, and the facts upon which it is based, are examined it will be seen that if the return filed in that case had contained all of the information needed for determining the tax there in dispute the Court would have held under its rule in *Germantown Trust Co. v. Commissioner*, 309 U. S. 304, that assessment of the deficiency was barred by the applicable statute of limitations. In the present case all of the needed information was shown on the return which was filed. See references on page 2 of the reply brief. Said *Lane-Wells* decision is therefore not an authority sup-

porting the Respondent's said contention. On the contrary, in its reasoning, it supports the contention of this petitioner.

2. More emphasis is here given also to that part of the decision of the Circuit Court of Appeals in the present case (R. 68) which deals with the question of liability of petitioner for payment of interest on the amount of the deficiency. Petitioner now as previously submits that said part of said decision is erroneous as indicated by the reasoning and the authorities cited in *Koppers Co. v. Commissioner*, 3 T. C.-No. 7, referred to on page 26 of petitioner's opening brief. That case was decided January 19, 1944 which was after the present case was decided by the Circuit Court. The petition herein should be granted in order that the decision of the Circuit Court respecting said interest question, which is of great importance in the administration of many taxation statutes, may be ruled upon by this Court. The Respondent's brief in opposition took no notice of the important disparity between these two decisions in this respect and because of this it is believed that this Court may not heretofore have noted such disparity.

It is now therefore respectfully urged, for all of the reasons stated in the former petition, in petitioner's brief in support thereof, in petitioner's said reply brief, and herein, that the Court reconsider and reverse or vacate its former decision or entry, grant the former petition and order that the writ of certiorari as prayed for be issued.

Respectfully submitted,

T. G. Thompson,

Counsel for Petitioner.

Certificate of Counsel.

I, counsel for the above named Lenore S. Robinette, certify that the foregoing petition for rehearing is presented in good faith and not for delay.

T. G. THOMPSON,
Counsel for Petitioner.